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CASE NO. 841993
IN THE SUPREME COURT OF THE UNITED STATES
1985 TERM

JOHN HYDE, PETITIONER v. BERNARD L. VAN WORMER, DONALD REGAN, RICHARD SMULEVITZ and INLAND STEEL COMPANY, RESPONDENTS

AND

JOHN HYDE, PETITIONER v. BLAW-KNOX FOUNDRY AND MILL MACHINERY, RESPONDENT

ON WRIT OF CERTORARI TO
THE U.S. COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS INLAND STEEL COMPANY, RICHARD SMULEVITZ, AND BLAW-KNOW FOUNDRY AND MILL MACHINERY IN RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI

GLENN R. PATTERSON
SINGLETON, LEVY, CRIST & JOHNSON
9013 Indianapolis Blvd.
Highland, Indiana 46322
(219) 972-2660

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TABLE OF CONTENTS

	Page
TABLE OF CASES.....	i
THF FACTS.....	2
ARGUMENT.....	3
1. The Decision Of The Court Below Is Plainly Correct....	3
2. Of The Three Reasonably Possible Alternative Courses of Action Available To This Court, Issuance Of The Writ and Summary Affirmance Is Most Appropriate.....	9
CONCLUSION.....	12

TABLE OF CASES

	Page
Judy Edgar v. Inland Steel Company, 744 F.2d 1276 (7th Cir. 1984).....	4
Granzow v. Commissioner, 739 F.2d 265 (7th Cir. 1984).....	7
Reid v. United States, 715 F.2d 1148 (7th Cir. 1983).....	7

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Come now the Respondents, INLAND STEEL COMPANY*/, RICHARD SMULEVITZ and BLAW-KNOX FOUNDRY AND MILL MACHINERY*/, by

*/ See Appearance of Record of the undersigned counsel for corporation listings pursuant to Rule 28.1.

counsel, and in response to the Petition for Writ of Certiorari herein respectfully concur that said Petition should be granted and submit that this Court should summarily affirm the Court below, and in support thereof offer the following for the consideration of this Court.

THE FACTS

For purposes of this Memorandum, said Respondents adopt the findings and conclusions of the United States District Court for the Northern District of Indiana and of the United States Court of Appeals for the Seventh Circuit as set forth in the Petitioner's Appendix.

ARGUMENT

1. The Decision Of The Court Below Is Plainly Correct.

The Petitioner's arguments that the awards of costs and attorney's fees against the Petitioner by the District Court and the Seventh Circuit Court of Appeals are constitutionally infirm because they were entered without adequate due process and because they constitute "an order of the federal court to pay dollars when there are no lawful dollars in circulation now, or for many years past" (Petition, pages 33 and 34), are patently frivolous and vexatious in every conceivable and reasonable respect.

The United States Seventh Circuit Court of Appeals stated in a previous but related case in which the Petitioner raised substantially similar issues and arguments,

Judy Edgar v. Inland Steel Company, 744 F.2d 1276 (7th Cir. 1984) as follows:

> "This lawsuit represents yet another disturbing example of a patently frivolous appeal filed by abusers of the tax system merely to delay and harass the collection of public revenues". (Petitioner's Appendix, page 31)

The Court below justifiably characterized this litigation as frivolous and vexatious in the following language:

> "Relatively low barriers to entry have, however, generated an undesirable result - a deluge of frivolous or vexatious claims filed by the uninformed, the misinformed, and the unscrupulous. These claims clog court dockets and threaten to undermine the ability of the judiciary to efficiently administer the press of cases properly before it. Perhaps the greatest safeguard against this danger is the integrity and good sense of practicing lawyers who, as officers of the Court, have both an ethical and legal duty to screen the claims of their clients for factual veracity and legal sufficiency. Model Rule

of Professional Conduct 3.1 (1983); Fed.R.Civ.P. 11. Lawyers have a unique opportunity to counsel restraint or recklessness, to craft imaginative arguments or to press empty challenges to well-settled principals. Because of our reluctance to constrain the discretion of attorneys in the vigorous advocacy of their clients' interests, we penalize them only where they have failed to maintain a minimum standard of professional responsibility. But we will not overlook such a failure when it occurs, in part because it evidences disdain for the public, whose claims lie dormant because frivolous suits have diverted away scarce judicial resources, disdain for adversaries, who must expend time and money to defend against meritless attacks, and disdain for clients, whose trust is rewarded with legal bills, dismissals and court imposed sanctions. We have consolidated the following two appeals by attorney John A. Hyde as examples of irresponsible advocacy falling below minimum professional standards and deserving of penalty." (Petitioner's Appendix, page 35)

The Court, then, in disposing of the merits of the Appeal below, stated in response to the Petitioner's argument that "as there are no dollars and a court can enter judgment only in dollars, no court can enter a valid judgment for money today", that:

> "This outrageous contention is so absurd that it merits no response. In any event, we summarily rejected a nearly identical claim in a recent appeal in which appellant served as plaintiffs' counsel. Edgar v. Inland Steel Company, 744 F.2d 1276, 1278 n.4 (7th Cir. 1984)." (Petitioner's Appendix, pages 36 and 37)

The Court below also held, in response to the Petitioner's due process argument, that:

> "While appellant did not have explicit notice that the Court would consider imposing costs and fees against him at the October 25, 1984, hearing, he knew that the Court would consider generally the imposition

of penalties. Such notice was sufficient under the circumstances of this case, and appellant, having voluntarily chosen not to attend the hearing, cannot now complain that he is entitled to additional process." (Petitioner's Appendix, page 37)

The Court below concluded its opinion as follows:

"We will no longer tolerate abuse of the judicial process by irresponsible counsel who obstinately continue to use the courts in bad faith as forums for expression of philosophic beliefs and not for the resolution of bona fide disputes. We have repeatedly cautioned against the filing of frivolous appeals such as these and have no hesitation imposing costs and reasonable attorney's fees pursuant to Fed.R.App.P. 38, against attorney John A. Hyde as appellant in No. 84-3041 and as lawyer for appellant in No. 84-2304. Granzow v. Commissioner, 739 F.2d 265 (7th Cir. 1984); Reid v. United States, 715 F.2d 1148 (7th Cir. 1983) (sanctions imposed against attorney). We also impose costs against appellant Lepucki in No. 84-2304.

> Last, we are referring attorney John A. Hyde to the appropriate state disciplinary bodies for investigation because of his pattern of abuse of the judicial process." (Petitioner's Appendix, page 39)

Not only is the decision of the Court below plainly correct on the merits with respect to the Petitioner's argument regarding judgments in dollars, but the record of the proceedings below itself clearly shows that the Petitioner either intentionally misrepresented facts to the Federal Courts, or filed unauthorized pleadings on behalf of his clients, which is more than sufficient to justify the awards against the Petitioner. No additional process can reasonably be held to be required for the imposition of the sanctions imposed upon the Petitioner. See

Footnote 1 to the Decision of the Seventh Circuit Court of Appeals in this case. (Petitioner's Appendix, page 36).

2. Of The Three Reasonably Possible Alternative Courses Of Action Available To This Court, Issuance of the Writ and Summary Affirmance Is Most Appropriate.

Three reasonably possible courses of action are available to the Court:

a. The Court may decide to deny certiorari because of the absence of a conflict of decisions among the federal courts.

b. The Court may decide to grant certiorari and hear argument on the merits of the questions of

federal law, despite the absence of any doubt as to the correctness of the decision below.

c. The Court may decide to grant certiorari and to summarily affirm the decision of the Court below.

These Respondents respectfully submit to the Court that the third alternative is the most appropriate in this case. These Respondents, therefore, concur with the Petitioner that the Writ of Certiorari be issued, albeit for obviously very different reasons. There is nothing more important in this case than for this Court to evidence its firm resolve that it will not tolerate the examples of irresponsible advocacy, disdain for the public, disdain for the courts, disdain for adversaries,

and disdain for clients which are evidenced by the Petitioner's conduct, all of which clearly falls below the minimum professional standards which must be enforced by this Court.

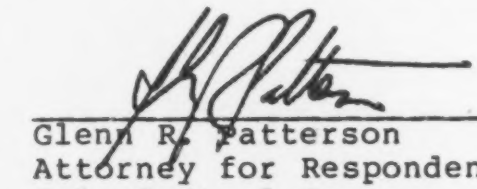
These Respondents also respectfully submit that summarily affirming the decision of the Court below is the most appropriate action in conjunction with the granting of the Petition for Writ of Certiorari, not only for the reasons set forth above, but also because such a disposition of this case would be the most expeditious way of disposing of the merits of the issues raised by the Petitioner, none of which can be better presented to this Court by the filing of briefs and the hearing of oral argument, and because it is critically important that this case be disposed of by this Court on the merits.

CONCLUSION

It is respectfully submitted by these Respondents that it is in the best interest of the public, the Federal judiciary and the members of the Federal Bar, that this Court issue its Writ of Certiorari to the Seventh Circuit Court of Appeals, and that the decision of said Court below be summarily affirmed in all respects, and, further, that the motion of these Respondents for assessment of damages and double costs pursuant to Rules 49.2 and 50.7 of the Rules of the Supreme Court of

the United States, filed concurrently herewith, be granted for the reasons set forth herein.

Respectfully submitted,



Glenn R. Patterson
Attorney for Respondents
Inland Steel Company,
Richard Smulevitz and
Blaw-Knox Foundry and Mill
Machinery

SINGLETON, LEVY, CRIST & JOHNSON
9013 Indianapolis Boulevard
Highland, Indiana 46322
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